(2)

Supreme Court, U.S.
FILED

931206 JAN 21 1994

OFFICE OF THE CLERK

NO. _____

In The
SUPREME COURT OF THE UNITED STATES OF AMERICA
October Term, 1993

BEXAR COUNTY APPRAISAL REVIEW BOARD
and BEXAR COUNTY APPRAISAL DISTRICT,
PETITIONERS

V.

FIRST BAPTIST CHURCH OF SAN ANTONIO
and VALERO REALTY COMPANY,
RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE FOURTH COURT OF APPEALS DISTRICT OF TEXAS, SAN ANTONIO

APPENDIX - VOLUME II

DENNIS K. DRAKE
Petitioners' Counsel of Record
Lincoln Center, Suite 235
7800 IH 10 West
San Antonio, Texas 78230
(210) 366-9636

---

69 pp

TABLE OF CONTENTS
and INDEX OF AUTHORITIES

APPENDIX

Volume II

Texas Supreme Court's Opinion
(Dissenting Opinion, pp. 37a-45a)
(June 10, 1992) 37a
Texas Supreme Court's Order
(July 17, 1992) 46a
Fourth Court of Appeals
First Opinion on Remand
Withdrawn (November 12, 1992) 48a
Texas Supreme Court's Order on
Writ of Error (June 3, 1993) 52a
Texas Supreme Court's Order on Rehearing
(October 27, 1993) 54a
Trial Court's Final Judgment
(July 17, 1989) 56a
Portions of Petitioners' Second Amended
Original Answer (May 12, 1989) 61a
Portions of Petitioners' Motion to
Dismiss (May 16, 1989) 64a
Portions of Petitioners'
Memorandum of Law (May 22, 1989) 67a
Statement of Facts Excerpts on
Petitioners' Motion to Dismiss and
Trial Court's Ruling (May 22, 1989) 74a
Trial Court's Order on
Petitioners' Motion to Dismiss
(May 25, 1989) 78a
Portions of Petitioners' Motion
for New Trial (August 14, 1989) 80a

Portions of Statement of Facts on
Petitioners' Motion for New Trial
(August 22, 1989) 83a
Trial Court's Order Overruling
Petitioners' Motion for New Trial
(September 11, 1989) 86a
Portions of Petitioners' Fourth Point
of Error to Fourth Court of
Appeals District of Texas, San Antonio
(January 29, 1990) 88a
Portions of Statement of Facts Testimony
by Chief Appraiser for Bexar County
Appraisal District on Other Similar
Church Properties (May 26, 1989) 92a

U.S. Constitutional Provisions

First Amendment 95a
Fourteenth Amendment 95a

Sections of the Texas Tax Code Ann.:

6.01 ..... 96a
11.11(a) and (d) 96a
11.18)a) and (b) 97a
11.181(a) and (c) 97a
11.19(a) and (b) 98a
11.20 ..... 99a
11.21(a) and (b) 101a
11.45(a) 102a
42.21(a) 102a
42.23 ..... 102a

IN THE SUPREME COURT OF TEXAS

NO. D-0689

FIRST BAPTIST CHURCH OF SAN ANTONIO, ET AL.,

PETITIONERS

v.

BEXAR COUNTY APPRAISAL REVIEW BOARD,

ET AL.,

RESPONDENTS

ON APPLICATION FOR WRIT OF ERROR TO THE

COURT OF APPEALS FOR THE FOURTH DISTRICT

OF TEXAS

DISSENTING OPINION

Today the court considers whether a parking lot owned by a church is "used primarily as a place of regular religious worship," when 91 percent of the lot's spaces are leased exclusively to a commercial enterprise from 7:30 a.m. to 5:00 p.m., Monday through Friday. Incredibly, the majority upholds a finding that the property is used primarily for religious purposes, despite a total absence of evidence to that effect. This holding gives an enormous tax break to virtually any business enterprise that is associated with a religious organization.

The issue in this case is not whether religious institutions deserve favorable tax treatment. No one doubts the value of the services provided by religious institutions in general, and by urban houses of worship in particular. Nor does anyone suggest that actual places of worship should be taxed. I do suggest, though, that a private business should not be allowed to profit from an exemption that was intended to shield religious worship from taxation. In the present case. it is the Valero Realty Company--not the First Baptist Church of San Antonio--that enjoyed the benefit of a tax exemption on valuable downtown property. Any change in the property's tax status would, under an express contractual

provision, affect Valero alone; it would not affect the church.[1] To that extent, the rhetoric of the concurring opinion by Justice Cook is misdirected; its position would provide a haven not for "the poor and the homeless," S.W.2d at ____, but for any profit-making, secular enterprise willing to take advantage of a tax loophole.

The Texas Constitution authorizes the legislature to exempt from taxation "actual places of religious worship." Tex. Const. art. VIII, § 2. Under that authority, the legislature has allowed religious organizations to claim an exemption for real property that is "used primarily as a place of regular religious worship." Tex. Tax Code § 11.20(a)(1). The exempted property may be used for "occasional secular purposes other than religious worship," but only if "the primary use of the property is for religious worship and and all income from the other use is devoted exclusively to the maintenance and development of the property as a place of religious worship. Tex. Tax Code § 11.20(d).

The parking lots at issue here were used throughout the work week by Valero Realty Company. The church generally used the parking lots only on Sundays and Wednesday evenings. To transform this commercial parking lot into space "used primarily for church purposes," the majority grasps at four peculiar criteria: (1) the purpose for which the property was purchased; (2) the church's primary use of the property; (3) the

---

1 The lease agreement states:

> Lessor shall be responsible for all taxes and assessments levied on the real estate or rents of the premises; provided, however, that Lessee shall reimburse Lessor for any increase in ad valorem taxes.

(Emphasis added.) The next provision explains how the present dispute made its way to this court:

> Lessee shall have the right to prosecute an appeal of any ad valorem tax matter concerning the premises wherein Lessee may face reimbursement obligations.

In the caption of this case, Valero's continued involvement is indicated only by a vague "et al."; but in view of the lease's language, Valero has far more at stake in this proceeding than does the church.

church's right of access to the property; and (4) its general availability after working hours.

The testimony as to why the church purchased the parking lots is clearly immaterial. The test is not whether the property was purchased for religious purposes, but whether the property is used for religious purposes. If the rule were otherwise, a religious organization would be free to devote any part of its property to a tax-exempt commercial enterprise as long as the property was originally purchased for religious purposes.

Similarly irrelevant is the testimony indicating that the church's primary use of the two parking lots was to provide church members with access to the church facilities." _____S.W.2d_____. This reference reflects a basic misunderstanding of the statute. The church's primary use of the parking lots is immaterial. The exemption applies only if "the primary use of the property is for religious worship." §11.20(d). The statute does not say that the primary use of the property by the religious organization must be for religious worship; if that were the case, any incidental use of the property by the church would satisfy the "primary use" test, as long as that incidental use involved religious worship.

Nor do the church's rights of access to the parking lots establish primary use of the property. Obviously, the use of property entails more than a mere right of access; it lies in the extent to which that right is utilized. If the right is not utilized, there is no "use" of the property at all.

Finally, the majority cites evidence that church members regularly used the parking lots on Sundays and Wednesday evenings, and sometimes used them at other times of the week. ____ S.W.2d ____. This may be evidence of use for religious worship; but it is certainly not evidence of primary use for religious worship. On the contrary, this evidence establishes that the church's use of the property was secondary to Valero's use of the property. The use of the parking lots by Valero was plainly not "occasional," as section 11.20(d) requires; it was normal and

regular, and far outweighed the church's periodic use of the property.

As noted above, the Texas Constitution authorizes an exemption only for "actual places of religious worship." Tex. Const. art. VIII, § 2. This court has previously emphasized that the words "actual place" impose a significant restriction on the phrase "of religious worship," Davies v. Meyer, 541 S.W.2d 827, 831 (Tex. 1976). The majority's decision today ignores that restriction. While conceding that actual use of property is "an important factor" in determining primary use, _____S.W.2d_____, the majority totally disregards the constitutional provision making actual use the controlling factor. Instead of focusing on the actual use of the property as a place of religious worship, the majority focused on such matters as the church's subjective reasons for purchasing the property and theoretical rights of access to it. This approach has no support in the language of the statute, and is inconsistent with the constitutional provision on which the statute is based.

By straining to allow an exemption in this case, the majority compounds the error this court made in City of Austin v. University Christian Church, 768 S.W.2d 718 (Tex. 1988). Under the Tax Code, the religious use exemption is available only if all income from a secular use is "devoted exclusively to the maintenance and development of the property as a place of religious worship." Tex. Tax Code § 11.20(d). Here, as in University Christian Church, much of the income from the property was not devoted to those purposes; rather, it flowed directly into the hands of the private, commercial entity that operated the parking lots on a daily basis. Apart from violating the Tax Code, this arrangement raises serious constitutional issues, which the court of appeals will have to address if it rejects the County's factual insufficiency claims.

Even under University Christian Church, today's decision is insupportable. The court in University Christian Church did

conclude that there was a fact issue as to primary use. It did not, however, change the general rules regarding "no evidence" points of error.[2] In this case, there was not a shred of evidence indicating that the parking lots were primarily used for the purpose of religious worship. Thus, the court of appeals properly reversed the judgment of the trial court and rendered judgment that the parking lots are not exempt from taxation.

To defend the majority's result, the concurring opinion by Justice Cook resorts to mischaracterizing the law, the facts, and this dissent. Without even acknowledging the language of our constitution, the concurring opinion inaccurately states that I would allow an exemption only for property that is "actually occupied for religious purposes." ____ S.W.2d at ____. In truth, I would interpret our constitution to mean exactly what it says: that the legislature may exempt from taxation "actual places of religious worship." Tex. Const. art. VIII, § 2. A church sanctuary may not be occupied at all times; but it is clearly an actual place of religious worship, and is therefore exempt from taxation. A commercial parking lot, in contrast, is clearly not an actual place of worship, and should not be exempt from taxation. See Second Church of Christ Scientist v. City of Philadelphia, 157 A.2d 54 (Pa. 1959) (parking lot is not within constitutional provision allowing exemption for "actual places of religious worship").

By equating a commercial parking lot with a church sanctuary, ____S.W.2d at ____, the concurring opinion demeans the exemption that the framers of our constitution allowed for actual places of religious worship. The exemption in article VIII,

---

[2] This court recently emphasized that our review of "no evidence" points requires a preliminary examination of "the quality of the evidence offered, inquiring whether the evidence offered has a tendency to prove the existence of a material fact." Crim v. Navistar, ___ S.W.2d ___, ___ n.1 (Tex. 1992) (citing Powers & Ratliff, Another Look at "No Evidence" and "Insufficient Evidence" Points of Error, 69 Tex. L. Rev. 515, 521-23 (1991)). Today, when the fact findings are more palatable to the majority, a markedly less-demanding level of scrutiny is applied.

section 2 was meant to guarantee all Texans the freedom to worship as they choose, without governmental interference in the form of undue burdens or benefits. As a secular, profit-making business, Valero Realty Company has nothing to do with religious worship, and should not be accorded tax benefits in the name of religious freedom.

The concurring opinion suggests that restricting the exemption to actual places of worship would raise insuperable practical difficulties, and would amount to an overwhelming hardship on the church. In fact, applying the Appraisal District's decision would not be a complicated matter, nor would it burden the church; Valero Realty Company would simply have to pay property taxes on its parking lot, just like any other business. The lease agreement, quoted supra at note 1, expressly requires Valero to assume the burden of any increase in property taxation.

A literal reading of the constitution would be consistent with the approach taken in this and other states that have construed tax exemptions for property on the basis of its use. For more than a century, this court has recognized the rule prevailing nationwide that when a building is owned by a tax-exempt organization, "the renting of even a part of the building for profit, though the proceeds be devoted exclusively to charity, subjects such part, at least, to taxation." Morris v. Lone Star Chapter No. 6, 68 Tex. 698, 704, 5 S.W. 519, 521 (1887) (citations omitted); see also Gibbons v. District of Columbia, 116 U.S. 404 (1886); Village of Oak Park v. Rosewell, 5O N.E.2d 981, 983-84 (Ill. App. Ct. 1983); In re Open Door Baptist Church, 437 A.2d 1291, 1292 (Pa. Comm. Ct. 1981); Christian Home for the Aged v. Tennessee Assessment Appeals Comm'n, 790 S.W.2d 288, 291 (Tenn. Ct. App. 1990), See generally Maurice T. Brunner, Annotation, Availability of Tax Exemption to Property Held on Lease from Exempt Owner, 54 A.L.R.3d 402, §§ 6, 14 (1973). In one of the three out-of-state cases cited by the concurring opinion, this general rule was applied to deny a complete exemption to a church

camp that was rented during part of the tax year to persons and organizations not affiliated with the church. Lutherans Outdoors in South Dakota, Inc. v. South Dakota Bd. of Education, 475 N.W.2d 140, 143 (S.D. 1991).

An exception to this rule may apply if the lessee's use of the property has some connection to the lessor's exempt purposes. For example, in another of the three out-of-state cases cited by the concurring opinion, a divinity school's parking lot was held to be exempt because it was used mainly by students and staff, only a nominal fee was charged, and the lot operated at a loss. Church Divinity School v. County of Alameda, 314 P.2d 209 (Cal. Ct. APP. 1957). In the present case, there is no suggestion that Valero's use of the property bears any relation to the church's religious purposes: Valero's employees have no apparent connection to the church; the company pays a normal, market-based rent; and the lot operates at a profit.

Rejecting the traditional approach, the concurring opinion argues that the religious-use tax exemption should be liberally construed in favor of the taxpayer. The opinion completely ignores the fact that Valero is the actual taxpayer in this case. More importantly, the opinion also overlooks the 1976 decision in which we soundly rejected the view that the concurring opinion now urges. In Davies v. Meyer, 541 S.W.2d at 829, we unanimously held that the religious-use exemption is to be "strictly and narrowly construed." This view is consistent with the approach taken by the vast majority of other states, which all adhere to the general rule that statutory or constitutional exemptions from taxation are strictly construed against the claimant and in favor of the right to tax. See, e.g., State v. Bridges, 21 So.2d 316, 317 (Ala. 1945) (calling this a "universal rule of construction"); State YMCA v. Winthrop, 29 A.2d 440, 441 (Me. 1972) ("universally accepted principle"); see generally 71 AM. JUR. 2D State and

Local Taxation § 326 (1973) ("fundamental rule of construction").[3]

One reason that religious-use exemptions have been applied restrictively is that any broader approach invites constitutional attacks. This problem is illustrated by events subsequent to the main case relied upon by the concurring opinion, Central Baptist Church v. Dade County, 216 So.2d 4 (Fla. 1968). That decision prompted a challenge based on the Religion Clauses of the First Amendment to the United states Constitution. After the United States Supreme Court agreed to review a district court's judgment upholding the exemption, the Florida Legislature fended off the constitutional challenge with prompt action; specifically, by amending the statute to allow an exemption only if the property is used predominantly for religious purposes, and only "to the extent of the ratio that such predominant use bears to the non-exempt use." Fla. Stat. § 196.192(2). See Diffenderfer v. Central Baptist Church, 404 U.S. 412 (1972). Instead of learning from Florida's experience, this court simply closes its eyes to the constitutional issues at stake, in total disregard of "our duty as a court to construe statutes in a manner which avoids serious doubts of their constitutionality." FSLIC v. Glen Ridge I Condominiums, 750 S.W.2d 757, 759 (Tex. 1988).

By reversing the judgment of the court of appeals, the majority dramatically expands another tax loophole. This action

---

[3] Apparently the only state to depart from this rule is Tennessee; acknowledging that their approach is "contrary to most other states," Tennessee courts liberally construe tax exemptions in favor of "religious, scientific, literary and educational institutions." Mid-State Baptist Hosp., Inc. v. City of Nashville, 366 S.W.2d 769, 773 (Tenn. 1963). Even Tennessee, though, has declined to extend its religious-use exemption to parking lots. See City of Nashville v. State Bd. of Equalization, 360 S.W.2d 458, 467 (Tenn. 1962) ("the operation of parking lots...is not a religious undertaking, but a secular business taxed as a privilege by the state, the county, and the city"); see also Christian Home for the Aged v. Tennessee Assessment Appeals Comm'n, 790 S.W.2d 288, 291 (Tenn. Ct. App. 1990)(exemption is denied to property leased by religious institution to others).

continues a recent and unfortunate trend of the majority in disregarding legitimate taxpayer concerns, see Carrolton-Farmers Branch Ind. Sch. Dist. v. Edgewood Ind. Sch. Dist., 826 S.W.2d 489, 522 (Tex. 1992) (forcing taxpayers to continue paying an unconstitutional tax), and granting preferential tax treatment to the privileged few for which other Texans must pay. See Gifford-Hill & Co. v. Wise County Appraisal Dist., ____ S.W.2d ____ (Tex. 1991) (according preferential tax treatment to corporate gravel companies and other mineral extractors). What the majority forgets is that tax exemptions and preferences constitute indirect public subsidies that are every bit is real as the direct expenditure of public monies.[4]

The question in this particular cause is whether a parking lot used almost exclusively by a commercial enterprise is "used primarily as a place of regular religious worship." Like the recent query as to whether limestone is a mineral, this question would appear to answer itself. With repeated rationalization, however, the majority once again declares the obvious answer to be the wrong answer. The majority is oblivious to the plight of the ordinary taxpayer who cannot escape paying taxes and who must, in addition, foot the bill for those who escape tax liability through a judicially-created loophole. The tax fairness contemplated by the Texas Constitution has been converted into tax injustice.

I would affirm the judgment of the court of appeals. Therefore, I dissent.

/S/

Oscar H. Mauzy,
Justice

Justices Doggett and Gammage join in this dissenting opinion.
OPINION DELIVERED: June 10, 1992

---

[4] The legislature has recognized this reality by enacting section 403.014 of the Texas Government Code, which requires the Comptroller to report annually on the cost of certain tax exemptions or tax expenditures. See Texas Comptroller of Public Accounts, Sales and Franchise Tax Exemptions (1991).

THE STATE OF TEXAS

To the Fourth Court of Appeals, Greetings:

Before our Supreme Court on the 10th day of June A.D. 1992, the Cause, upon writ of error, to revise or reverse your Judgment between

FIRST BAPTIST CHURCH OF SAN ANTONIO ET AL.

VS.

BEXAR COUNTY APPRAISAL REVIEW BOARD ET AL.

No. D-0689 in the Supreme Court of Texas

No. 04-89-00543-CV in the Fourth Court of Appeals, Texas, was determined; and therein our said Supreme Court entered its judgment or order in these words:

"THE SUPREME COURT OF TEXAS, having heard this cause on writ of error to the Court of Appeals for the Fourth District, and having considered the appellate record and the argument of counsel, is of the opinion that the judgment of the court of appeals should be reversed.

"IT IS THEREFORE ORDERED, in accordance with the Court's opinion, that:

1) The judgment of the court of appeals is reversed;

2) The cause is remanded to the Court of Appeals for the Fourth District for further proceedings in conformity with the opinion of this Court;

3) First Baptist Church of San Antonio et al. shall recover from Bexar County Appraisal Review Board et al., which shall pay, the costs incurred in this Court in this cause."

"A copy of this judgment and of the Court's opinion is certified to the Court of Appeals for the Fourth District. The original record and all instruments filed with the court of appeals

shall accompany the mandate of this Court to the Fourth Court of Appeals."

Wherefore we command you to observe the order of our said Supreme Court in this behalf, and in all things to have recognized, obeyed, and executed.

Wherefore the Honorable Thomas R. Phillips, Chief Justice of our said

Supreme Court, with the seal thereof annexed, at the City of Austin, this the 17th day of July A.D. 1992

JOHN T. ADAMS, Clerk
By_____
Courtland Crocker, Deputy

COURT OF APPEALS
FOURTH COURT OF APPEALS DISTRICT OF TEXAS
SAN ANTONIO
OPINION
Appeal No. 04-89-00543-CV
BEXAR COUNTY APPRAISAL REVIEW BOARD,et. al.,
Appellant
v.
FIRST BAPTIST CHURCH, et. al.,
Appellee
Appeal from the 224th District Court
of Bexar County
Trial Court No. 84-CI-20348
Honorable Carolyn H. Spears, Judge Presiding
Opinion by: David Peeples, Justice
Sitting: Blair Reeves, Chief Justice
Shirley W. Butts, Justice
David Peeples, Justice
Delivered and Filed: November 12, 1992
AFFIRMED AS REFORMED

Earlier in this property tax exemption case, we held that the evidence was legally insufficient to support the jury's finding that a church parking lot was used primarily for religious purposes. Bexar County Appraisal Review Bd. v. First Baptist Church, 800 S.W.2d 892 (Tex. App.--San Antonio 1990). The supreme court disagreed with that ruling and returned the cause to us for consideration of points of error that we did not reach. First Baptist Church v. Bexar County Appraisal Review Bd., 833 S.W.2d 108 (Tex. 1992).

Appellants Bexar County Appraisal Review Board and the Bexar Appraisal District (collectively referred to as the district) appeal from a judgment based on a jury finding that two parking lots owned by the First Baptist Church of San Antonio (the church) and leased to the Valero Realty Company (Valero) are

exempt from property taxes for 1984-1986. The judgment ordered that the value of the property on the appraisal roll be reduced to zero, and decreed that the property is exempt from taxation for the three years. The judgment also awarded the church attorney's fees. Additional facts may be found in the two reported opinions.

The district complains that: (1) the judgment exempting the property from taxation is unconstitutional, (2) the award of attorney's fees was unauthorized, and (3) the court made certain erroneous rulings during trial.[5] In one cross-point, the church and Valero seek damages on the ground that the district's claim of unconstitutionality is frivolous and was made for purposes of delay. The district also contends that the evidence is factually insufficient, but the supreme court held the evidence legally sufficient, and in view of its construction of the exemption statute, we hold that the evidence is factually sufficient as well.

I.

We first consider the district's argument that the tax exemption violates the First and Fourteenth Amendments to the United States Constitution, and article one, § 6 and article eight, § 2 of the Texas Constitution. The United States Supreme Court has approved essentially the same kind of property tax exemption, provided the exemption applies not only to churches but also to other nonprofit entities. See Walz v. Tax Comm'n, 397 U.S. 664, 90 S. Ct. 1409, 25 L. Ed. 2d 697 (1970); see also Texas Monthly, Inc. v. Bullock, 489 U.S. 1, 11, 109 S. Ct. 890, 103 L. Ed. 2d 1 (1989) (opinion of Brennan, Marshall, & Stevens, JJ.) (stressing that the property tax exemption at issue in Walz was granted to nonprofit entities as well as religious bodies). The statute before

---

[5] The district also argues that the trial court erred in its submission of jury question one and its accompanying instructions. The supreme court dismissed that argument as meritless and we need not consider it further. See 833 S.W.2d at 110 n.2. Contrary to the district's suggestions, the issue did not improperly comment on the weight of the evidence or advise the jury of the effect of its answers.

us extends an exemption to various nonsectarian groups, such as charities, schools, and veterans' organizations. See TEX. PROP. TAX CODE 11.11 et seq. (Vernon 1992). Under Walz and Texas Monthly, the exemption statute does not violate the federal constitution on its face or as applied to the church's parking lot.

* * * * *

We have considered all the district's complaints about the judgment. With the exception of the award of attorney's fees, all are overruled.

We reform the judgment to delete the award of attorney's fees. As reformed, the judgment is affirmed.

DAVID PEEPLES
Justice

PUBLISH

COURT OF APPEALS
FOURTH COURT OF APPEALS DISTRICT OF TEXAS
SAN ANTONIO
JUDGMENT
Appeal No. 04-89-00543-CV
BEXAR COUNTY APPRAISAL REVIEW BOARD, et.al.,
Appellant
v.
FIRST BAPTIST CHURCH, et. al.,
Appellee
Appeal from the 224th District Court
of Bexar County
Trial Court No. 84-CI-20348
Honorable Carolyn H. Spears, Judge Presiding
BEFORE CHIEF JUSTICE REEVES AND JUSTICES BUTTS AND PEEPLES

JUDGMENT

In accordance with this Court's opinion of this date, we have considered all the district's complaints about the judgment. With the exception of the award of attorney's fees, all are overruled.

We REFORM the judgment to delete the award of attorney's fees. As REFORMED, the judgment is AFFIRMED.

It is further ORDERED that costs are assessed one-fourth against First Baptist Church, et al, and three-fourths against Bexar County Appraisal Review Board, et al.

SIGNED November 12, 1992.

/S/
DAVID PEEPLES
JUSTICE

THE SUPREME COURT OF TEXAS
P. O. Box 12248
Supreme Court Building
Austin, Texas 78711
John T. Adams. Clerk
June 3, 1993

Mr. Dennis K. Drake
Alvaro Briseno, II
Law Office of Dennis K. Drake
7800 IH 10 West
Lincoln Center, Suite 235
San Antonio, TX 78230-4750

Mr. William W. Kilgarlin
Popp & Ikard
707 West Tenth Street
Austin, TX 78701

Mr. Robert J. Myers
The Law Offices of Hickey & Myers
7800 Vantage Drive
I-H 10 West - Suite 600
San Antonio, TX 78230-4734

RE: Case No. D-3487
Style: BEXAR COUNTY APPRAISAL REVIEW BOARD and BEXAR COUNTY APPRAISAL DISTRICT
v. FIRST BAPTIST CHURCH OF SAN ANTONIO and VALERO REALTY COMPANY

Dear Counsel:

Today, the Supreme Court of Texas denied the above referenced application for writ of error with the notation, "Writ

Denied." Respondents' motion to disregard petitioners' second point of error is overruled.

Sincerely,
John T. Adams, Clerk
BY: /S/
Blanca Morin, Deputy

THE SUPREME COURT OF TEXAS
P. O. Box 12248
Supreme Court Building
Austin, Texas 78711
John T. Adams. Clerk
October 27, 1993

Mr. Dennis K. Drake
Mr. Alvaro Briseno, II
Law Office of Dennis K. Drake
7800 IH-10 West
Lincoln Center, Suite 235
San Antonio, TX 78230

Hon. William W. Kilgarlin
Popp & Ikard
707 West Tenth Street
10th Street
Austin, TX 78701
Mr. Robert J. Myers
The Law Offices of Hickey & Myers
7800 Vantage Drive
I-H 10 West - Suite 600
San Antonio, TX 78230-4734

RE: Case No. D-3487
Style: BEXAR COUNTY APPRAISAL REVIEW BOARD and BEXAR COUNTY APPRAISAL DISTRICT
v. FIRST BAPTIST CHURCH OF SAN ANTONIO and VALERO REALTY COMPANY

Dear Counsel:

Today, the Supreme Court of Texas overruled petitioner's motion for rehearing of the application for writ of error in the above styled case.

Respectfully yours,
JOHN T. ADAMS. CLERK
BY: /S/
Michael C. Murphey,
Deputy Clerk

FIRST BAPTIST CHURCH and VALERO REALTY COMPANY
VS.
BEXAR APPRAISAL DISTRICT and
BEXAR APPRAISAL REVIEW BOARD
IN THE DISTRICT COURT
225TH JUDICIAL DISTRICT

ENTRY: Recorded in Volume 801A at pages 0232-0234, minutes of the 224th Judicial District Court.

RENDERED: July 17, A.D., 1989

FINAL JUDGMENT

On the 23rd day of May, 1989, came this cause on for trial on the merits. Plaintiffs, FIRST BAPTIST CHURCH OF SAN ANTONIO and VALERO REALTY COMPANY, appeared in person and by and through their counsel of record and announced ready for trial. Defendants, BEXAR APPRAISAL DISTRICT and BEXAR APPRAISAL REVIEW BOARD, appeared in person and by and through their counsel of record, and further announced ready for trial.

TR198

A jury was duly and properly impaneled, and having heard the evidence, and having been instructed in matters of law by the Court, the following two questions and no others were submitted for the jury's consideration, and the jury was instructed as follows, and the jury having considered the evidence and having been the instructed in the law by the Court, the jury answered as is indicated below where those notations are made after said questions:

QUESTION NO. 1

Find, from a preponderance of the evidence, whether the First Baptist Church of San Antonio is entitled to an exemption on the property the subject of this lawsuit.

We the Jury answer:

TR198

The property should be exempt: yes

The property should not be exempt:

You are instructed that in order to qualify for an exemption that the property must be owned by a religious organization; be used primarily as a place of regular religious worship; and, be reasonably necessary for engaging in religious worship. You are further instructed that the use of the property for occasional secular purposes, other than religious worship, does not result in loss of the exemption if the primary use of the property is for religious worship, and all income from the other use is devoted exclusively to the maintenance and development of the property as a place of religious worship.

"Religious worship" means individual or group ceremony or meditation, education, and fellowship, the purpose of which is to manifest or develop reverence, homage and commitment in behalf of a religious faith.

TR199

You are further instructed in considering whether the property the subject of this suit should be exempt, that a place of religious worship includes not only the sanctuary, but also those grounds and structures surrounding the sanctuary which are necessary for the use and enjoyment of the church.

QUESTION NO. 2

Find, from a preponderance of the evidence, the amount of reasonable attorney's fees, if any, incurred by Plaintiff in connection with this cause as concerns the market value of the properties the subject of this suit.

Answer in dollars and cents, if any, as to each:

Through the trial of this case: $54,439.18

Through the Court of Appeals, if necessary:

$44,000.00

Through the Supreme Court, if necessary:

$27,000.00

You are instructed as concerns Question No. 2 that in considering what is a reasonable attorney

TR199
fee, if any, that you could consider the time and labor expense by the attorneys for the Plaintiff in TR199
connection with the litigation, the nature and complexity of the case, the skill and degree of sophistication of the attorneys for the Plaintiff in prosecuting the case, the reputation and experience of the attorneys, and the amounts of fees and services charged by other attorneys in and around San Antonio, Bexar County, Texas, for rendering like or similar services to clients as those rendered in this case.

The verdict was returned with the answers as above indicated, and was signed by Meluina Benesch Sheridan, Presiding Juror.

The Court, having considered the evidence, the pleadings, the jury's verdict and further having heard the argument of counsel and having considered the law applicable, is of the opinion and finds that the jury's verdict is just, and the Court
TR200
accepts said verdict, and finds that it should form the basis of this Court's judgment.

The following properties are those the subject of this suit.

BEXAR APPRAISAL DISTRICT ACCT. NO.

01761-000-00-10
01761-000-00-20
01761-000-00-26
01761-000-00-30
01761-000-00-40
01761-000-00-50
01761-000-00-60
01761-000-00-80
01761-000-00-90
01760-000-00-40

These properties are known generically as the First Baptist Church parking lots, and more specifically, as according to the

evidence, the "McCullough Lot" and "the River Lot".
TR200

It is accordingly ORDERED, ADJUDGED and DECREED that the properties the subject of this suit be, and they are hereby
TR200
declared exempt under the provisions of Sec. 11.20 Texas Tax Code. As the appraised value of the property, according to the appraisal roll exceeds the appraised value required by law, the First Baptist Church is entitled to a reduction of the appraised value on the appraisal roll to zero for each of the tax years in question (1984, 1985, 1986); thus it is accordingly

ORDERED that the Defendant, BEXAR APPRAISAL DISTRICT, correct the appraisal roll to reflect that the market value of the properties the subject of this suit for tax years 1984, 1985 and 1986 is zero, and the Defendant, BEXAR APPRAISAL DISTRICT, is hereby ORDERED to comply with the provisions of Sec. 42.41, 42.42 and 42.43 Tax Code in a manner not inconsistent with this Court's judgment. The Court declares and concludes that Defendant, BEXAR APPRAISAL DISTRICT, should apply the provisions of Sec. 23.13 Tax Code to Valero Realty Company's interest in the leasehold estate for the tax years 1984, 1985 and 1986.

It is further ORDERED that Judgment be, and it is hereby rendered, over and against the BEXAR APPRAISAL DISTRICT and BEXAR APPRAISAL REVIEW BOARD, and in favor of FIRST BAPTIST CHURCH OF SAN ANTONIO and VALERO REALTY COMPANY, INC., in the sum of ONE HUNDRED TWENTY FIVE THOUSAND FOUR HUNDRED THIRTY NINE and 18/100 ($125,439.18) DOLLARS as reasonable attorneys fees incurred and/or to be incurred by Plaintiffs in connection with this cause, provided, however, that this Judgment shall be credited in the amount of TWENTY SEVEN THOUSAND TR201

DOLLARS ($27,000.00) in the event no appeal or Application for Writ of Error is taken to the Texas Supreme Court, and further conditioned that this Judgment shall be credited in the amount of FORTY FOUR THOUSAND DOLLARS ($44,000.00) in the event no TR202 appeal is taken to the Court of Appeals from this Court's Judgment. All costs herein having been paid by the party incurring same, let no execution issue.

All other and further relief requested by the parties and not herein granted is hereby specifically denied.

RENDERED, SIGNED and ENTERED this 17 day of July, 1989.

/S/
CAROLYN H. SPEARS
Judge Presiding

TR202

FIRST BAPTIST CHURCH AND

VALERO REALTY COMPANY

V.

BEXAR APPRAISAL DISTRICT and

BEXAR APPRAISAL REVIEW BOARD

NO. 86-CI-20348

225TH JUDICIAL DISTRICT COURT

FILING: FILED
May 12, 1989
4:47 p.m.
David J. Garcia
District Clerk
Bexar Co., Texas
By Maria E. Perez,
Deputy

DEFENDANTS' SECOND AMENDED ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

The BEXAR APPRAISAL DISTRICT and the BEXAR APPRAISAL REVIEW BOARD, Defendants in the above-captioned lawsuit, file this their Second Amended Original Answer in response to Plaintiffs'

TR111

Third Amended Original Petition and as grounds therefore would show the Court the following:

AFFIRMATIVE DEFENSES

TR111

. . .

CONSTITUTIONAL LIMITATIONS

IX.

Plaintiff Church, in choosing to lease some of its parking spaces to Valero for a sum in excess of $100,000.00 a year has converted this property into a commercial profit-making

enterprise. Accordingly, the granting of an exemption under the facts and circumstances of this case would result in an impermissible state subsidy and/or sponsorship of a religious enterprise in violation of the First Amendment to the United States Constitution and/or Article 1, §6 of the Texas Constitution.
TR114

. . .

WHEREFORE, PREMISES CONSIDERED, Defendants request that upon a final trial, Plaintiffs' cause TR115
of action be dismissed and a take-nothing judgment be awarded in favor of Defendants and/or and for such other and further relief to which Defendants may be justly entitled at law or in equity.

Respectfully submitted,

/S/

DENNIS K. DRAKE
State Bar No. 06105000
Lincoln Center, Suite #235
7800 I.H. 10 West
San Antonio, Texas 78230
(512) 366-9636

STATE OF TEXAS §
§
COUNTY OF BEXAR §

BEFORE ME, the undersigned authority, on this day personally appeared WALTER STONEHAM, who being by me first duly sworn, did depose and state that he is the duly authorized representative for the BEXAR APPRAISAL DISTRICT, Defendant in the above-numbered and entitled cause, and in his capacity as said designated representative states that each and every fact stated in
TR115-116

Defendants' Second Amended Original Answer is true and correct.

By: /S/

Title: CHIEF APPRAISER

SUBSCRIBED AND SWORN TO before me on this 11th day of May 1989.

/S/

Notary Public
State of Texas
Printed or Typed Name of
Notary:

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing document of notice (identified below) to which this certificate is attached was served, prepaid, on this date below upon each listed party or, if of record in this cause, that party's named attorney(s) of record at his/her/their respective last address as follows:

DOCUMENT/NOTICE:

DEFENDANTS' SECOND AMENDED ORIGINAL ANSWER
TR116

PARTY OR ATTORNEYOF RECORD	METHOD OF SERVICE
Mr. Robert J. Myers Willis, Hickey & Hougham 7800 IH-10 West, Suite 600 San Antonio, Texas 78230	HAND-DELIVERED

Date: 5/12/89

/S/

DENNIS K. DRAKE

TR116

FIRST BAPTIST CHURCH AND VALERO REALTY COMPANY

v.

BEXAR APPRAISAL DISTRICT AND BEXAR APPRAISAL REVIEW BOARD

No. 86-CI-20348

225TH DISTRICT COURT

FILING: FILED
May 16, 1989
4:39 p.m.
David J. Garcia
District Clerk
Bexar Co., Texas
By Maria E. Perez
Deputy

MOTION TO DISMISS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME BEXAR APPRAISAL DISTRICT and BEXAR APPRAISAL REVIEW BOARD, Defendants in the above-captioned lawsuit, and file this, their, Motion to Dismiss, and as grounds therefor would show the Court the following:

TR126

. . .

IV.

Plaintiff, FIRST BAPTIST CHURCH, in choosing to lease some of its parking spaces to VALERO REALTY COMPANY for a sum in excess of ONE HUNDRED THOUSAND DOLLARS ($100,000.00) a year has converted this property into a commercial profit-making enterprise. Accordingly, the granting of an exemption under the facts and circumstances of this case would result in an impermissible state subsidy and/or sponsorship of a religious enterprise in violation of the First Amendment of the United States Constitution and/or

Article 1, Section 6 of the Texas Constitution.
TR127

. . .

WHEREFORE, PREMISES CONSIDERED, Defendants request that, upon a final trial,, Plaintiffs' cause of action be dismissed and a take nothing judgment be awarded in favor of Defendants and/or for such other and further relief to which Defendants may be justly entitled at law or in equity.

Respectfully submitted,

/S/

DENNIS K. DRAKE
State Bar No. 06105000
Law Offices of Dennis K. Drake
Lincoln Center, Suite 235
7800 IH 10 West
San Antonio, Texas 78230
(512) 366-9636

TR128

F I A T

Defendants' Motion to Dismiss, having been presented to me in the above entitled and numbered cause, same is set for hearing on Monday, the 22nd day of May, 1989, at 3:00 o'clock p.m., in the Courtroom of Judge Carolyn Spears, the 224th District Court, Bexar County Courthouse, San Antonio, Texas.

SIGNED this 16th day of May, 1989.

/S/

JUDGE CAROLYN SPEARS

TR129

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing document or notice (identified below) to which this certificate is attached was served, prepaid, on this date below upon each listed party or, if of record in this cause, that party's named attorney(s) of record at

his/her/their respective last address as follows:

DOCUMENT/NOTICE:

MOTION TO DISMISS

PARTY OR ATTORNEY OF RECORD	METHOD OF SERVICE
Mr. Robert J. Myers Willis, Hickey, Hougham & Myers 7800 IH 10 West, Suite 600 San Antonio, Texas 78230	HAND DELIVERY

Date: 5/16/89

_____

DENNIS K. DRAKE

TR130

NO. 86-CI-20348
DISTRICT COURT 225TH JUDICIAL DISTRICT COURT
BEXAR COUNTY, TEXAS
****
FIRST BAPTIST CHURCH OF SAN ANTONIO AND
VALERO REALTY COMPANY VS.
BEXAR APPRAISAL DISTRICT and
BEXAR APPRAISAL REVIEW BOARD

FILING: May 22, 1989
2:40 p.m.
David J. Garcia
Clerk of the District Courts
Bexar Co., Texas
By Jane Vollmer,
Deputy

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND JOINT MOTION TO STRIKE PLAINTIFF'S FOURTH AMENDED PETITION

TR162

To THE HONORABLE JUDGE OF SAID COURT:

Now comes BEXAR APPRAISAL DISTRICT and BEXAR APPRAISAL REVIEW BOARD, Defendants in the above-styled and numbered cause, and file this their Memorandum of Law In Support of Their Motion to Dismiss and Joint Motion to Strike Plaintiffs' Fourth Amended Petition, and in support thereof would respectfully show unto the court the following:

TR162

. . .

IX.

Unconstitutional Application

Plaintiffs totally misinterpret Defendants' constitutional arguments contained in ¶IV of Defendants' Motion to Dismiss. The Bexar Appraisal District and the Appraisal Review Board are not seeking a determination that any statute is unconstitutional. To

the contrary, it is the position of the Defendants that all provisions of the *Prop. Tax Code* pertinent to this case are
TR168
constitutional, but if the Defendants granted the exemption requested by Plaintiffs, that same would be an unconstitutional application of the statute, and would amount to an impermissible state subsidy and/or sponsorship of a religious enterprise.
TR168

X.

Defendants have the duty to insure that an exemption or partial exemption is not improperly granted, V.T.C.A. *Prop. Tax Code* §41.01(2), and to take specific action if the requirements of law are not met, V.T.C.A. *Prop. Tax Code* 41.02. Plaintiffs herein are not only demanding that Defendants violate their statutory duty, but Plaintiff First Baptist is also demanding that their profit-making enterprise, which other nearby private parking lot operators must compete with, be granted an exemption that Defendants do not grant to any other religious organization within the Appraisal District.
TR169

XI.

In Plaintiffs' Response to Defendants' Motion to Dismiss, they argue that "incidental income related to a secular use does not destroy the exemption, so long as all such income is devoted exclusively to the maintenance and development of the property." Besides being a clear admission by the Plaintiffs that this enterprise benefits solely and exclusively First Baptist Church of San Antonio (therefore serving a non-secular purpose), their statement fails to point out the balance of the test: the secular use must be "occasional" and the primary use of the property must be for religious worship. V.T.C.A. Prop. Tax Code §11.20(d).

Plaintiffs further argue that "the "subsidy" to the extent same might exist, is conferred on a wide variety of non-sectarian groups, as well as religious organizations in pursuit of legitimate

ends," and as authority therefore, reference exemptions provided other entities. What Plaintiffs do not provide is any authority showing that an exemption under the facts and circumstances of this case has ever been allowed and upheld in the State of Texas. Plaintiffs have, through a strained sense of logic and application of law to facts, argued to the Court that the requirements of Texas Monthly, Inc. vs. Bullock, 109 Supreme Court 890 (1989) have been met, and that the factual scenario in Walz vs. Tax Commission of New York City, 397 U.S. 664 (1970) is identical to the facts in the case at bar.
TR169-170

However, in the Texas Monthly Case, United States Supreme Court struck down a tax exemption allowed to a religious organization~s publication of religious periodicals which was not allowed to a non-religious organization's publication of religious periodicals. Id at 905. The Court therein stated: what is crucial is that any subsidy afforded religious organizations be warranted by some overarching secular purpose that justifies like benefits for non-religious groups." Id at 899. Here, First Baptist wants an exemption for a profit making enterprise (i. e. parking lot operations), while at the same time such an exemption would not be allowed for a non-religious organization's operation of a parking lot. Furthermore, Plaintiffs' Admission in their response, that all income from this enterprise is devoted exclusively to the maintenance and development of the property, flies directly in the face of the United States Supreme Court's mandate that an overarching secular purpose be served.
TR170

Plaintiffs reliance upon the *Waltz* case is totally misplaced. In the Waltz case, the exemption in issue was granted for property solely used for religious purposes. Id et 666. (emphasis supplied) This type exemption was upheld. Id et 680. Here, it is undisputed that the parking lot in question is not used exclusively and solely for religious worship. Besides dealing with

a statute and facts that would bear no correlation to the statute and facts at issue in this case, the Supreme Court in Waltz did cite an 1886 case wherein a tax exemption was denied for land owned by a church but used to produce income. Id et 679.
TR171

. . .

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully pray that their Motion to Dismiss and Joint Motion to Strike be granted.
TR172

Respectfully submitted,
LAW OFFICES OF DENNIS K. DRAKE
Lincoln Center, Suite #235
7800 IH-10 West
San Antonio, Texas 78~30
(512) 366-9636
By: /S/
DENNIS K. DRAKE
State Bar No. 061050000

TR172

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing document of notice (identified below) to which this certificate is attached was served, prepaid, on this date below upon each listed party or, if of record in this cause, that party's named attorney(s) of record at his/her/their respective last address as follows:

DOCUMENT/NOTICE:
MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND JOINT MOTION TO STRIKE PLAINTIFFS' FOURTH AMENDED PETITION

PARTY OR ATTORNEY OF RECORD METHOD OF SERVICE

Mr. Robert J. Myers HAND-DELIVERED
Willis, Hickey, Hougham & Myers
7800 IH-10 West, Suite 600
San Antonio, Texas 78230

Date: 5/22/89

/S/
DENNIS K. DRAKE

TR172

FIRST BAPTIST CHURCH OF SAN ANTONIO
AND VALERO REALTY COMPANY
VS.
BEXAR APPRAISAL DISTRICT AND
BEXAR APPRAISAL REVIEW BOARD
224TH JUDICIAL DISTRICT
STATEMENT OF FACTS
PRE-TRIAL HEARINGS
VOLUME II OF 9 VOLUMES
MAY 10 & 22, 1989
(VOLUME I IS CLERK'S TRANSCRIPT)

APPEARANCES:

PRESIDING: HONORABLE CAROLYN H. SPEARS
Judge, 224th District Court
Bexar County Courthouse
San Antonio, Texas 78205

FOR THE
PLAINTIFFS: MR. ROBERT J. MYERS
Willis, Hickey, Hougham & Myers
7800 IH-10 West, Suite 600
San Antonio, Texas 78230
(512) 340-6984

AND

MR. WILLIAM W. KILGARLIN
Powell, Popp & Ikard
707 West Tenth Street
Austin, Texas 78701
(512) 473-2661

FOR THE
DEFENDANT: MR. DENNIS K. DRAKE
MR. ROBERT E. ETLINGER
7800 IH-10 West, Suite 235
San Antonio, Texas 78230
(512) 366-9636

--*-*-*-*-*-*-*-*-*-*-*-*-*

MARY ORALIA BERRY, CSR, RPR
OFFICIAL COURT REPORTER
224TH DISTRICT COURT
BEXAR COUNTY COURTHOUSE
SAN ANTONIO, TEXAS 78205
(512) 220-2132

PROCEEDINGS

MAY 22, 1989

MONDAY

(At 3:50 p.m., the following
(proceedings were had before
(the Court:

. . .

THE COURT: Good afternoon. Do you have an agreement as to which motions we will hear this afternoon?

MR. DRAKE: Yes, Your Honor. Dennis Drake for the record. I'm the attorney for the Appraisal Review Board and the Bexar Appraisal District in this lawsuit, for the Defendants in this lawsuit. The motions that are before the Court are Defendants' Motion to Dismiss and Defendants' Motion to Strike Plaintiffs' Fourth Amended Petition, Your Honor.

SF36

. . .

That is, they are coming forward -- and simply stated, Your Honor, they're asking that we exempt this church from the payment of any taxes when that offends the First Amendment to the United States Constitution and also offends Article I, Section 6 of the Texas Constitution. The Supreme Court of the United States has stated that the Constitution -- or the test for a constitutional religious exemption must serve a secular purpose.

And the bottom line of that case, which is the **Texas Monthly case vs. Bullock** that's cited in the brief, Your Honor, is that any exemption to a church which relieves the church of paying taxes on a profit-making enterprise cannot serve a secular purpose. The reason for that is, it would result in the subsidizing of a religious organization to the detriment of secular entities who must compete with that religious organization.

SF49

Judge, I have cited both those cases, and with the permission of the Court, I would like to -- I have a copy here, and

I've also provided opposing counsel previously with the United States Supreme Court case, which is styled **Texas Monthly vs. Bob Bullock.**

And I've also, Your Honor, provided a copy to the Court of the Court of Civil Appeals decision which was -- the dissenting opinion was basically approved when it went before the United States Supreme Court.

And in that case, Your Honor, JusticeCarroll said, in his dissenting opinion, that
SF50
although **Texas Monthly** did not preserve on appeal the Texas constitutional provisions, that it would have been even a stronger case from the State Constitution than it was for the United States Constitution. And for that purpose, I provided the Court of Civil Appeals case out of Austin with Justice Carroll's dissent.
SF51

. . .

Again, I want to stress to the Court, I am not here at this time saying that the statute is unconstitutional. I believe that the misapplication that these Plaintiffs want the Court to apply to what is basically a sham and a
SF53
charade would make it unconstitutional, because Valero is the one charged under the terms of the lease with paying any of the taxes -- or at least above the set rate for the taxes.

Furthermore, in establishing any exemption below that rate, which is about $6,000 a year to the church, the church is in direct competition with other parking lots that make a profit. And they're getting the benefit of a religious exemption for what is basically a business venture. That directly violates the test that is set forth in this United States Supreme Court Bullock vs. -- or **Texas Monthly vs. Bullock**.
SF54

. . .

MR. DRAKE: Your Honor, let me address the United States constitutional issue, a second. In the **Texas Monthly** case, the U.S. Supreme Court addressed in a footnote found at page 898, footnote number two on page 898, they address the **Walz** case. And they say that the finding in the **Walz** case is not to be interpreted, and "We in no way intimated that the exemption would have been valid had it applied only to the property of religious groups, or had it lacked a permissible secular objective."

If you go back to page 897 on the **Texas Monthly** case, on the right-hand side, Your Honor, at the second paragraph, it says: "In all of these cases," -- talking about sustaining a property tax exemption for religious properties, no less than to real estate owned by nonprofit organizations; in other words, it's not just a sales tax case.

SF61

"In all of these cases, we emphasized that the benefits derived by religious organizations flowed to a large number of nonreligious groups, as well. Indeed, were those benefits confined to religious organizations, they could not have appeared other than as state sponsorship of religion; if that were so, we would not have hesitated to strike them down for lacking a secular purpose and effect."

What we have here in this case is a lack of secular purpose and effect.

SF61

. . .

MR. DRAKE: Your Honor, I'm not arguing that there are other areas in Chapter 11 that are granted exemptions. What I'm saying here is that to grant an exemption to a parking lot where the church has paid over $100,000 a year for the use of that by Valero for those lots, and then get an exemption for what is business purpose, not a religious purpose -- in other

words, it's a business purpose; it's changed the whole character of

the property -- would be violating the Secular Purpose Clause of the Constitution that is addressed in Texas Monthly.

I'm not attacking the whole scheme, and never meant to of Chapter 11. I don't disagree SF62 with anything that's in Chapter 11. What I do disagree with is, they've come into court seeking to have a misapplication of Section 11.20 of the Property Tax Code.
SF63

. . .

THE COURT: Anything else on the Motion to Dismiss?

MR. DRAKE: No, Your Honor, I do not.
SF71

THE COURT: I'll deny the Motion to Dismiss.
SF72

FIRST BAPTIST CHURCH OF SAN ANTONIO
AND VALERO REALTY COMPANY

v.

BEXAR APPRAISAL DISTRICT AND
BEXAR APPRAISAL REVIEW BOARD

No. 86-CI-20348

224TH JUDICIAL DISTRICT COURT

ENTRY: Recorded in Volume 790A at pages 1001-1002, Minutes of the 224th Judicial District Court.

RENDERED: May 25, A.D., 1989.

ORDER

On the 22nd day of May, 1989, in the above numbered and entitled cause, came on to be heard Defendants' Motion to Dismiss. Defendants, **BEXAR APPRAISAL DISTRICT** and **BEXAR APPRAISAL REVIEW BOARD,** appeared by and through their counsel and announced ready. Plaintiffs, **FIRST BAPTIST CHURCH OF SAN ANTONIO** and **VALERO REALTY COMPANY,** appeared by and through their counsel and announced ready.

TR173

WHEREUPON, the Court, after considering the arguments of counsel and the documents on file in this matter, finds that Defendants' Motion should be denied.

IT IS, THEREFORE, ORDERED that Defendants' Motion to Dismiss is hereby in all things denied.

SIGNED this 25th day of May, 1989.

/S/

JUDGE CAROLYN SPEARS

APPROVED AS TO BOTH FORM AND SUBSTANCE:

/S/

ROBERT J. MYERS

State Bar No. 14765 380

Willis, Hickey, Hougham & Myers

7800 IH 10 West, Suite 600

San Antonio, Texas 78230-4734

(512) 340-2200

ATTORNEY FOR PLAINTIFFS

TR174

APPROVED AS TO FORM:

/S/

DENNIS K. DRAKE

State Bar No. 06105000

Law Offices of Dennis K. Drake

Lincoln Center, Suite 235

7800 IH 10 West

San Antonio, Texas 78230

(512) 366-9636

ATTORNEY FOR DEFENDANTS

TR174

FIRST BAPTIST CHURCH OF SAN ANTONIO AND
VALERO REALTY COMPANY

v.

BEXAR APPRAISAL DISTRICT AND
BEXAR APPRAISAL REVIEW BOARD

No. 86-CI-20348

225TH JUDICIAL DISTRICT COURT

FILING: FILED

August 14, 1989
11:26 a.m.
David J. Garcia
District Clerk
Bexar Co., Texas
By Bachyen Nenyen,
Deputy

MOTION FOR NEW TRIAL

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME BEXAR APPRAISAL DISTRICT and BEXAR APPRAISAL REVIEW BOARD, Defendants herein, and file this, their Motion for New Trial, and in support thereof, respectfully show unto the Court the following:

TR203

. . .

Defendants are entitled to a new trial in that the granting of an exemption under the facts and circumstances of this case would, as a matter of law, result in an impermissible state subsidy and/or sponsorship of a religious enterprise in violation of the First Amendment to the United States Constitution and/or Article 1, §6 of the Texas Constitution.

TR204

. . .

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully pray that upon notice and hearing, the Court grant a new trial and that the Court set aside the judgment

previously rendered herein, and grant the Defendants a new trial.

Respectfully submitted,

LAW OFFICES OF DENNIS K. DRAKE
Lincoln Center, Suite 235
7800 IH 10 West
San Antonio, Texas 78230
By: /S/
DENNIS K. DRAKE
State Bar No. 06105000

TR207

FIAT

Defendants' Motion for New Trial, having been presented to me in the above entitled and numbered cause, same is set for hearing on Tuesday, the 22nd day of August, 1989, at 8:30 o'clock a.m. in the Courtroom of the 224th District Court, Judge Carolyn H. Spears, Bexar County Courthouse, San Antonio, Bexar County, Texas.

SIGNED this 14th day of August, 1989.

/S/ Carolyn H. Spears
JUDGE PRESIDING

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing document or notice (identified below) to which this certificate is attached was served, prepaid, on this date below, upon each listed party or, if of record in this cause, that party's named attorney(s) of record at his/her/their respective last address as follows:

DOCUMENT/NOTICE:
MOTION FOR NEW TRIAL
TR208

PARTY(S) OR ATTORNEY(S): **METHOD OF SERVICE:**

Mr. Robert J. Myers — HAND DELIVERY
Willis, Hickey, Hougham & Myers
7800 IH 10 West, Suite 600
•San Antonio, Texas 78230
DATE: 8/14/89

/S/
DENNIS K. DRAKE

TR208

FIRST BAPTIST CHURCH OF SAN ANTONIO
AND VALERO REALTY COMPANY
VS.
BEXAR APPRAISAL DISTRICT AND
BEXAR APPRAISAL REVIEW BOARD
224TH JUDICIAL DISTRICT
STATEMENT OF FACTS
PRE-TRIAL HEARINGS
VOLUME VIII OF 9 VOLUMES
JUNE 29, 1989 AND AUGUST 22, 1989
APPEARANCES:

PRESIDING: HONORABLE CAROLYN H. SPEARS
Judge, 224th District Court
Bexar County Courthouse
San Antonio, Texas 78205

FOR THE
PLAINTIFFS: MR. ROBERT J. MYERS
Willis, Hickey, Hougham & Myers
7800 IH-10 West, Suite 600
San Antonio, Texas 78230
(512) 340-6984

AND

MR. WILLIAM W. KILGARLIN
Powell, Popp & Ikard
707 West Tenth Street
Austin, Texas 78701
(512) 473-2661

FOR THE
DEFENDANT: MR. DENNIS K. DRAKE
MR. ROBERT E. ETLINGER
7800 IH-10 West, Suite 235
San Antonio, Texas 78230
(512) 366-9636

--*-*-*-*-*-*-*-*-*-*-*-*

MARY ORALIA BERRY, CSR, RPR
OFFICIAL COURT REPORTER
224TH DISTRICT COURT
BEXAR COUNTY COURTHOUSE
SAN ANTONIO, TEXAS 78205
(512) 220-2132

PROCEEDINGS
August 22, 1989
Tuesday

(The following
(proceedings were had
(before the Court:

MR. ETLINGER: Your Honor, as you know, this Court presided over the case of **First Baptist Church of San Antonio and Valero Realty Company vs. Bexar Appraisal District, et al**, Cause Number 86-CI-20348. And after trial and based upon the verdict, the Judge entered a judgment therein. We are now here on behalf of the Appraisal District and the Bexar Appraisal Review Board asserting a Motion for New Trial.
SF1041

. . .

And last, with regard to Special Issue Number 1, again, as we had argued in the past, that on the facts that got presented during the course of this trial, to grant this church an exemption would amount to an unconstitutional -- an impermissible and unconstitutional state subsidy of religion.
SF1042

. . .

THE COURT: I'll deny the Motion for New Trial.

. . .

SF1054

FIRST BAPTIST CHURCH OF SAN ANTONIO AND
VALERO REALTY COMPANY

v.

BEXAR APPRAISAL DISTRICT AND
BEXAR APPRAISAL REVIEW BOARD

CAUSE NO. 86-CI-20348

224TH JUDICIAL DISTRICT COURT

ENTRY: Recorded in Volume 816A at page 0037, minutes of the 224th Judicial District Court.

RENDERED: September 11, A.D., 1989.

ORDER OVERRULING MOTION
FOR NEW TRIAL

On the 22nd day of August, 1989, came onto be heard Defendants Motion for New Trial in the above referenced cause. All parties appeared by and through their attorneys of record and announced ready. The court, having examined the motion, and having heard the argument of counsel is of the opinion and so finds that said motion should be in all things denied.

TR210

It is accordingly ordered that Defendants Motion for New Trial be and it is here by overruled and denied.

SIGNED AND ENTERED this 11 day of Sept., 1989.

/S/

HONORABLE CAROLYN SPEARS
JUDGE PRESIDING

APPROVED AS TO FORM AND SUBSTANCE:

/S/
ROBERT J. MYERS
State Bar No.
14765380
WILLIS, HICKEY, HOUGHAM
& MYERS
7800 IH 10 West,
Suite 600
San Antonio, Texas 78230
1-512-340-6984
ATTORNEYS FOR
PLAINTIFFS
TR210

/S/
DENNIS K. DRAKE
State Bar No.
06105000
7800 IH 10 West
Suite 235
San Antonio, TX
78230
1-512-366-9636

ATTORNEY FOR
DEFENDANTS

No. 04-89-005430-CV

IN THE FOURTH COURT OF APPEALS

AT SAN ANTONIO

THE BEXAR COUNTY APPRAISAL DISTRICT

AND

THE BEXAR COUNTY APPRAISAL REVIEW BOARD

Appellants

FIRST BAPTIST CHURCH OF SAN ANTONIO

and

VALERO REALTY COMPANY

Appellees

BRIEF OF APPELLANTS

RECEIVED AND FILED: January 29, 1990
Herb Schaefer, Clerk

TO THE HONORABLE COURT OF APPEALS:

Appellants, THE BEXAR COUNTY APPRAISAL DISTRICT and THE BEXAR COUNTY APPRAISAL REVIEW BOARD (collectively, "The District") respectfully submit their Brief to this Honorable Court of Appeals.

(pp.1, 38-40)

FOURTH POINT OF ERROR: THE TRIAL COURT ERRED IN GRANTING JUDGMENT FOR THE CHURCH/VALERO BECAUSE, AS A MATTER OF LAW, THE GRANTING OF AN EXEMPTION IN THIS CASE VIOLATES THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE ONE SECTION SIX AND ARTICLE EIGHT, SECTION TWO OF THE TEXAS CONSTITUTION.

A. An Exemption In This Case Fails To Meet The "Overarching Secular Purpose" Test.

The First Amendment to the United States Constitution Provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;

and

> *Article One. Section Six. Texas Constitution: All men have a natural and indefeasible right to worship Almighty God according the dictates of their consciences. No man shall be compelled to attend, erect or support any place of worship or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience and matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. That it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.* (Emphasis supplied)

The United States Supreme Court, in a case involving a state sales tax, struck down as unconstitutional a tax exemption which was allowed by Texas law to religious publications where the same exemption was not allowed to non-religious publications: The test was enunciated in **Texas Monthly, Inc. v. Bullock**, 109 8.Ct. 890 (1989) @ p. 899:

> What is crucial is that any subsidy afforded religious organizations be warranted by some overarching secular purpose that justifies like benefits for non-religious.

The United States Supreme Court again affirmed this principal in **Jimmy Swaggert Ministries v. Board of Equalization of California**, --- S.Ct. --- (1990).

The testimony of the Chief Appraiser of the Bexar Appraisal District, Mr. Walter Stoneham, establishes that in all of the Bexar Appraisal District, there are **only four other churches that are in a similar position or circumstances to rent out their parking lots**. (SF VII, pp. 873-877). Therefore, out of all of the religious properties located in Bexar County, the First Baptist Church of San Antonio is only one of five which would benefit from this exemption. In effect, this results not only in an

establishment of just those religious organizations that can lease their property for commercial use, but also results in a state sponsored support or preference for a particular religious society or mode of worship; all in violation of the United States and Texas Constitutions, and in contravention of the Supreme Court's ruling in **Texas Monthly**.

For the reasons set forth below, the granting of an exemption here clearly fails to meet the "overarching secular purpose" test enunciated in **Texas Monthly** to qualify as an exemption which would pass constitutional muster.

It is uncontroverted that the Church rents parking lots for commercial purposes. (SF IX, PX 1 and 2.) There is therefore a secular use question which must be addressed in deciding the Church's qualification for an exemption; Property Tax Code 11.20(d). Neither the Property Tax Code nor any other law in the State of Texas exempts an owner/operator of a commercial parking lot from payment of property taxes.

Furthermore, if this property was owned by Valero or by a parking lot business, and then leased to First Baptist Church, no exemption would be allowed. By the mere good fortune of leasing parking spaces from a Church, as opposed to a private, for profit business, Valero, not the Church, will save substantial sums in reduced property taxes if the lots are exempted from the payment of taxes. (See SF IX, PX 1 and 2, paragraph 8.)

If tax exemption legislation benefit only a select few is unconstitutional (as in **Texas Monthly**), then a judge's or jury's ruling should not be allowed to accomplish that which the United States Supreme Court says legislation cannot do. Here, the subsidy and concomitant unconstitutional application comes in the form of a judgment. (TR 198-202.)

. . .

Respectfully submitted,
LAW OFFICES OF DENNIS K. DRAKE
Lincoln Center, Suite 235
7800 IH 10 West
San Antonio, Texas 78230
(512) 366-8636
By: /S/
DENNIS K. DRAKE
State Bar No. 06105000
ATTORNEYS FOR APPELLANTS

NO. 86-CI-20348

FIRST BAPTIST CHURCH OF SAN ANTONIO
AND VALERO REALTY COMPANY
VS.
BEXAR APPRAISAL DISTRICT AND
BEXAR APPRAISAL REVIEW BOARD
224TH JUDICIAL DISTRICT
STATEMENT OF FACTS
TRIAL ON THE MERITS (CONTINUED)
VOLUME VII OF 9 VOLUMES
MAY 26, 1989

APPEARANCES:

PRESIDING: HONORABLE CAROLYN H. SPEARS
Judge, 224th District Court
Bexar County Courthouse
San Antonio, Texas 78205

FOR THE
PLAINTIFFS: MR. ROBERT J. MYERS
Willis, Hickey, Hougham & Myers
7800 IH-10 West, Suite 600
San Antonio, Texas 78230
(512)340-6984

AND

MR. WILLIAM W. KILGARLIN
Powell, Popp & Ikard
707 West Tenth Street
Austin, Texas 78701
(512) 473-2661

FOR THE
DEFENDANT: MR. DENNIS K. DRAKE
MR. ROBERT E. ETLINGER
7800 IH-10 West, Suite 235
San Antonio, Texas 78230
(512) 366-9636

--*-*-*-*-*-*-*-*-*-*-*-*-*

MARY ORALIA BERRY, CSR, RPR
OFFICIAL COURT REPORTER
224TH DISTRICT COURT
BEXAR COUNTY COURTHOUSE
SAN ANTONIO, TEXAS 78205

. . .

DIRECT EXAMINATION (Continued)

BY MR. DRAKE: Now, by "similar churches," Mr. Stoneham, describe to the jury -- does that deal with location, or does it deal with the way the property is treated regarding an exemption?

SF876

MR. STONEHAM: Only with the way the property is treated regarding the exemption, not -- it deals with location to the extent that it has to be within the Bexar Appraisal District for me to decide on it. But anywhere within the Bexar Appraisal District, if any church leases property for secular purposes, then I have to deny the exemption.

MR. DRAKE: All right. And so, when we're talking about similar properties regarding an exemption, similar church properties, Mr. Stoneham, the churches you just mentioned, did that deal with leasing out parking lots?

MR. STONEHAM: In these five cases, it dealt with leasing parking lots, yes.

MR. DRAKE: All right. And Mr. Kilgarlin asked you, I believe, about the location of one that was near the Express News?

MR. STONEHAM: Yes.

MR. DRAKE: And does that -- what church is that?

SF877

MR. STONEHAM: I believe Grace Lutheran is near the Express News, and I believe First Presbyterian is near the Express News.

MR. DRAKE: And that church, Grace Lutheran, does it lease its property or its parking lot out?

MR. STONEHAM To the best of my knowledge, it leases its parking lot to the Express News for employee parking at the Express News.

. . .

SF877

U.S.C.A. Const. Amend. I

AMENDMENT I--FREEDOM OF RELIGION, SPEECH AND PRESS; PEACEFUL ASSEMBLAGE; PETITION OF GRIEVANCES

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S.C.A. Const. Amend. XIV. §1

AMENDMENT XIV--CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without

due process of law; nor deny any person within its jurisdiction the equal protection of the laws;

Tex. Tax Code Ann. §6.01 (Vernon 1992). Appraisal Districts Established.

(a) An appraisal district is established in each county.

(b) The district is responsible for appraising property in the district for ad valorem tax purposes of each taxing unit that imposes ad valorem taxes on property in the district.

(c) An appraisal district is a political subdivision of the state.

. . .

Tex. Tax Code Ann. §11.11 (Vernon 1992). Public Property.

(a) Except as provided by Subsections (b) and (c) of this section, property owned by this state or a political subdivision of this state is exempt from taxation if the property is used for public purposes.

. . .

(d) Property owned by the state that is not used for public purposes is taxable. Property owned by a state agency or institution is not used for public purposes if the property is rented or leased for compensation to a private business enterprise to be used by it for a purpose not related to the performance of the duties and functions of the state agency or institution or used to provide private residential housing for compensation to members of the public other than students and employees of the state agency or institution owning the property, unless the residential use is secondary to its use by an educational institution primarily for instructional purposes. Any notice required by Section 25.19 of this code shall be sent to the agency or institution that owns the property, and it shall appear in behalf of the state in any protest or appeal related to taxation of the property.

. . .

(f) Property of a higher education development foundation or an alumni association that is located on land owned by the state for the support, maintenance, or benefit of an institution of higher education as defined in Chapter 61, Education Code, is exempt

from taxation if:

(1) the foundation or organization meets the requirements of Sections 11.18(e) and (f) and is organized exclusively to operate programs or perform other activities for the benefit of institutions of higher education; and

(2) the property is used exclusively in those programs or activities.

. . .

Tex. Tax Code Ann. §11.18(a)-(b) (Vernon 1992). Charitable Organizations.

(a) An organization that qualifies as a charitable organization as provided by this section is entitled to an exemption from taxation of the buildings and tangible personal property that:

(1) are owned by the charitable organization; and

(2) except as permitted by Subsection (b) of this section, are used exclusively by qualified charitable organizations.

(b) Use of exempt property by persons who are not charitable organizations qualified as provided by this section does not result in the loss of an exemption authorized by this section if the use is incidental to use by qualified charitable organizations and limited to activities that benefit the beneficiaries of the charitable organizations that own or use the property.

. . .

Tex. Tax Code Ann. §11.181 (Vernon Supp. 1994). Charitable Organizations Improving Property for Low-Income Housing.

(a) An organization is entitled to an exemption from taxation of improved or unimproved real property it owns if the organization:

(1) meets the requirements of a charitable organization provided by Sections 11.18(e) and (f);

(2) owns the property for the purpose of building or repairing housing on the property primarily with volunteer labor to sell without profit to an individual or family satisfying the organization's low-income and other

eligibility requirements; and

(3) engages exclusively in the building, repair, and sale of housing as described by Subdivision (2), and related activities.

. . .

(c) An organization entitled to an exemption under Subsection (a) is also entitled to an exemption from taxation of any building or tangible personal property the organization owns and uses in the administration of its acquisition, building, repair, or sale of property. To qualify for an exemption under this subsection, property must be used exclusively by the charitable organization, except that another individual or organization may use the property for activities incidental to the charitable organizations use that benefit the beneficiaries of the charitable organization.

. . .

Tex. Tax Code Ann. §11.19 (Vernon 1992). Youth Spiritual, Mental, and Physical Development Associations.

(a) An association that qualifies as a youth development association as provided by Subsection (d) of this section is entitled to an exemption from taxation of the tangible property that:

(1) is owned by the association;

(2) except as permitted by Subsection (b) of this section, is used exclusively by qualified youth development associations; and

(3) is reasonably necessary for the operation of the association.

(b) Use of exempt tangible property by persons who are not youth development associations qualified as provided by Subsection (d) of this section does not result in the loss of an exemption under this section if the use is incidental to use by qualified associations and benefits the individuals the associations serve.

. . .

Tex. Tax Code Ann. §11.20 (Vernon 1992). Religious Organizations.

(a) An organization that qualifies as a religious organization as provided by Subsection (c) of this section is entitled to an exemption from taxation of:

(1) the real property that is owned by the religious organization, is used primarily as a place of regular religious worship, and is reasonably necessary for engaging in religious worship;

(2) the tangible personal property that is owned by the religious organization and is reasonably necessary for engaging in worship at the place of worship specified in Subdivision (1) of this subsection;

(3) the real property that is owned by the religious organization and is reasonably necessary for use as a residence (but not more than one acre of land for each residence) if the property:

(A) is used exclusively as a residence for those individuals whose principal occupation is to serve in the clergy of the religious organization; and

(B) produces no revenue for the religious organization;

(4) the tangible personal property that is owned by the religious organization and is reasonably necessary for use of the residence specified by Subdivision (3) of this subsection; and

(5) the real property owned by the religious organization consisting of:

(A) an incomplete improvement that is under active construction or other physical preparation and that is designed and intended to be used by the religious organization as a place of regular religious worship when complete; and

(B) the land on which the incomplete improvement is

located that will be reasonably necessary for the religious organization's use of the improvement as a place of regular religious worship.

(b) An organization that qualifies as a religious organization as provided by Subsection (c) of this section is entitled to an exemption from taxation of those endowment funds the organization owns that are used exclusively for the support of the religious organization and are invested exclusively in bonds, mortgages, or property purchased at a foreclosure sale for the purpose of satisfying or protecting the bonds or mortgages. However, foreclosure-sale property that is held by an endowment fund for longer than the two-year period immediately following purchase at the foreclosure sale is not exempt from taxation.

(c) To qualify as a religious organization for the purposes of this section, an organization (whether operated by an individual, as a corporation, or as an association) must:

(1) be organized and operated primarily for the purpose of engaging in religious worship or promoting the spiritual development or well-being of individuals;

(2) be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain; and

(3) by charter, bylaw, or other regulation adopted by the organization to govern its affairs:

(A) pledge its assets for use in performing the organizati

on's religious functions; and

(B) direct that on discontinuance of the organization by dissolution or otherwise the assets are to be transferred to this state or to a charitable, educational, religious, or other similar organization

that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1954, as amended. (footnote omitted)

(d) Use of property that qualifies for the exemption prescribed by Subdivision (1) or (2) of Subsection (a) of this section for occasional secular purposes other than religious worship does not result in loss of the exemption if the primary use of the property is for religious worship and all income from the other use is devoted exclusively to the maintenance and development of the property as a place of religious worship.

(e) For the purposes of this section, "religious worship" means individual or group ceremony or meditation, education, and fellowship, the purpose of which is to manifest or develop reverence, homage, and commitment in behalf of a religious faith.

(f) A property may not be exempted under Subsection (a)(5) of this section for more than two years.

. . .

Tex. Tax Code Ann. §11.21 (Vernon 1992). Schools.

(a) A person is entitled to an exemption from taxation of the buildings and tangible personal property that he owns and that are used for a school that is qualified as provided by Subsection (d) of this section if:

(1) the school is operated exclusively by the person owning the property;

(2) except as permitted by Subsection (b) of this section, the buildings and tangible personal property are used exclusively for educational functions; and

(3) the buildings and tangible personal property are reasonably necessary for the operation of the school.

(b) Use of exempt tangible property for functions other than educational functions does not result in loss of an exemption authorized by this section if those other functions are incidental to

use of the property for educational functions and benefit the students or faculty of the school.

. . .

Tex. Tax Code Ann. § 11.45 (Vernon 1992). Action on Exemption Applications.

(a) The chief appraiser shall determine separately each applicant's right to an exemption. After considering the application and all relevant information, the chief appraiser shall, as the law and facts warrant:

(1) approve the application and allow the exemption;

(2) modify the exemption applied for and allow the exemption as modified;

(3) disapprove the application and request additional information from the applicant in support of the claim; or

(4) deny the application.

. . .

Tex. Tax Code Ann. § 42.21 (Vernon 1992). Petition for Review.

(a) A party who appeals as provided by this chapter must file a petition for review with the district court within 45 days after the party received notice that a final order has been entered from which an appeal may be had. Failure to timely file a petition bars any appeal under this chapter.

. . .

Tex. Tax Code Ann. §42.23 (Vernon 1992). Scope of Review.

(a) Review is by trial de novo. The district court shall try all issues of fact and law raised by the pleadings in the manner applicable to civil suits generally.

(b) The court may not admit in evidence the fact of prior action by the appraisal review board or comptroller, except to the extent necessary to establish its jurisdiction.

(c) Any party is entitled to trial by jury on demand.